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May 2, 2005

RECEIVED

MAY - 2 2005

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

**Re: Roanoke & Botetourt Telephone Company
CC Docket Nos. 96-45 & 00-256
Request for Review of an Administrator Decision**

Dear Ms. Dortch:

John Staurulakis, Inc. ("JSI") respectfully submits the enclosed Request for Review of an Administrator Decision ("Request for Review") on behalf of Roanoke & Botetourt Telephone Company (the "Company").¹ The Request for Review is made pursuant to Sections 54.719 and 54.722 of the Commission's Rules² and requests the Wireline Competition Bureau to review a decision by the Universal Service Administrative Company ("USAC") which has significantly reduced the Company's Safety Net Additive support.

Please contact the undersigned at JSI with any questions concerning this filing.

Sincerely,

John Kuykendall
Director - Regulatory Affairs

on behalf of Roanoke & Botetourt Telephone
Company

Enclosure

cc: Tom Navin, Chief, Wireline Competition Bureau (via hand delivery)
Irene Flannery, V.P., High Cost & Low Income Division, USAC (via first class mail)
Karen Majcher, Director, High Cost Support Mechanism, USAC (via first class mail)

¹ Please note that the enclosed is a facsimile copy, and will be supplemented with the original upon its receipt.

² See 47 C.F.R. §§ 54.719 & 54.722.

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9430 Research Boulevard, Austin, TX 78759
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phone: 651-452-2660, fax: 651-452-1909

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MAY - 2 2005

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Request for Review by) CC Docket No. 96-45
Roanoke & Botetourt Telephone Company) CC Docket No. 00-256
Of Decision of Universal Service)
Administrator)

To: Chief, Wireline Competition Bureau

REQUEST FOR REVIEW OF AN ADMINISTRATOR DECISION

Pursuant to Sections 54.719 and 54.722 of the Commission's Rules,¹ Roanoke & Botetourt Telephone Company (the "Company") hereby requests the Federal Communications Commission ("FCC" or "Commission") to review a decision by the High Cost & Low Income Division of the Universal Service Administrative Company ("USAC") regarding recalculation of the Company's Safety Net Additive ("SNA") support. As demonstrated herein, the Company has been significantly adversely affected by USAC's decision to recalculate the SNA support that the Company receives.

USAC's decision to recalculate the Company's SNA support was based on a recently announced interpretation by the FCC's Wireline Competition Bureau ("Bureau") of Section 36.605 of the Commission's Rules (the "SNA Rule").² This recalculation has resulted not only in reduced monthly support that is appreciably less than the amount the Company received previous to its decision, but also requires the Company to pay back SNA support that would not have been advanced to the Company if USAC had obtained the Bureau's interpretation of the rule from the outset.

If USAC's decision is allowed to stand, the Company will be denied the predictability and incentives that the SNA Rule was designed to provide the Company in order for to make investments in its network infrastructure to better serve its communities. Further, because USAC failed to provide any notice of the possibility that the Company's SNA support would be recalculated, it appears that the Company's due process rights have been violated. Accordingly, the Company respectfully requests that the Commission conduct a thorough review of this matter and overturn USAC's decision to recalculate the Company's SNA support.

¹ See 47 C.F.R. §§ 54.719 & 54.722.

² See 47 C.F.R. § 36.605.

1. Background

The Company is a rural telephone company that is a recipient of SNA support. The Company has been receiving SNA since January 2003. SNA is an additional universal service support provided to rural carriers that have made significant investment in rural infrastructure during the period in which the support level would otherwise exceed the indexed cap on the high-cost support loop fund.³ All universal service support, including SNA, is administered by a not-for-profit corporation, USAC, under the direction of the FCC. Section 36.605 of the Commission's Rules, the SNA Rule, specifies how SNA support is to be calculated for rural telephone companies.⁴

The Company received a letter from the High Cost & Low Income Division of USAC dated March 2, 2005, informing the Company that a "clarification" by the FCC of the SNA Rule required USAC to recalculate the Company's SNA support both on a prospective and a retroactive basis.⁵ On a prospective basis, the Company's monthly SNA support has been reduced from \$12,314.00 to \$2,112.00, a difference of \$10,202.00. Regarding the retroactive adjustment, the USAC Letter indicates that the Company owes USAC \$255,050.00 ("the prior period adjustment").⁶ This prior period adjustment has been deducted from the total amount of support provided to the Company in the NECA settlement process.⁷

³ See *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) ("MAG Order") at paras. 78, 80.

⁴ See 47 C.F.R. § 36.605.

⁵ See Letter from Karen Majcher, Director, High Cost Support Mechanism, USAC, to Chris Foster, Roanoke & Botetourt Telephone Company, dated March 2, 2005 ("USAC Letter") at 1 (Attachment 1).

⁶ *Id.* at 2. In the USAC Letter, the actual total amount of SNA support received to date is subtracted from an estimated total SNA support that would have been received if USAC had used the FCC's interpretation of the SNA Rule in making the Company's SNA calculations. This results in a significant balance of funds being owed to USAC.

⁷ See the Company's March and April 2005 statements from NECA (Attachment 2) showing the deduction of the "prior period adjustment" as follows: On the March 30, 2005 revised statement: \$46,288.00 deducted against the high cost loop fund, \$103,585 deducted against the interstate common line support; \$57,294.00 deducted from the local switching support; \$12,314.00 deducted from the SNA support; and on the April 28, 2005 statement: \$45,771.00 shown as "high cost funds not received from USAC." The total of these amounts is \$265,252.00 which contains both the "prior period adjustment" of \$255,050.00 and an additional amount of \$10,202.00 which is the difference between the revised monthly support and the January 2005 monthly support.

II. Grant of Request for Review is Justified

1. Statement of the Party's Interest in the Matter Presented for Review

SNA support is designed to provide rural carriers with "appropriate incentives" and "predictability" to invest in the network infrastructure serving their communities.⁸ In harmony with this goal, the Company has relied upon receiving the full SNA support that USAC had indicated it would receive when it made its original calculations and has continued to invest in its network infrastructure in order to better serve the communities located within its authorized service area.

In making its decisions regarding future investment in its infrastructure, the Company had no knowledge that the SNA support would be reduced or subject to a possible "take back." The first notice provided to the Company indicating that its SNA would be recalculated was the USAC Letter received in March 2005, in which it informed the Company that effective immediately, the monthly SNA support would be reduced by \$10,202.00 and that the Company would have to immediately pay back all of the "prior period adjustment" received to date which amounted to \$255,050.00.

Because of USAC's failure to provide any notice that the SNA support may be recalculated and the drastic steps that it has taken when it discovered that its interpretation of FCC rules were not in accord with the Bureau's, the Company has been negatively impacted financially and its ability to invest in network infrastructure to better serve its communities has been severely curtailed.

2. Statement of Relevant, Material Facts

The person whose signature appears below is an authorized officer of the Company and hereby declares that the information contained herein as it pertains to the Company is true and accurate to the best of my knowledge, information and belief.

In the USAC Letter dated March 2, 2005, USAC informed the Company that because the Bureau had "clarified that SNA support should be based on the amount calculated for the first qualifying year," USAC is "required" to recalculate SNA support for companies that filed subsequent SNA qualification letters after their initial qualification letter.⁹ On its web page, USAC attached a copy of the letter in which the FCC made this clarification (the "Bureau Letter").¹⁰

⁸ MAG Order at paras. 80 & 81.

⁹ See USAC Letter, Attachment 1.

¹⁰ See USAC web page (www.universalservice.org) containing copy of letter dated January 14, 2005, from Jeffrey J. Carlisle, Chief of the Commission's Wireline Competition Bureau to Irene Flannery of USAC, Attachment 3.

The Bureau Letter cited a memorandum dated November 24, 2003, in which USAC sought assistance from the FCC's Telecommunications Access Policy Division of the Bureau regarding the application of the SNA Rule in the context of carriers that meet the SNA eligibility criteria in more than one period (the "Memorandum").¹¹ In the Memorandum, USAC specifically asked the FCC's guidance as to "whether carriers who meet the SNA eligibility criteria in more than one period may be eligible to receive additional support, and if so, how much and over what period of time."¹² To be eligible for SNA, a rural carrier must realize growth in Telecommunications Plant in Service ("TPIS") per loop of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.¹³ In the Memorandum, USAC provided an example of a rural telephone company that met the 14 percent TPIS trigger in two subsequent years and posed three alternative methods for calculating SNA support, the first one being a scenario in which SNA support should be based on the amount calculated for the first qualifying year.¹⁴

Over a year after USAC posed its questions to the Bureau, the Bureau responded in its Bureau Letter dated January 14, 2005. The Bureau found that USAC's first scenario was the correct application of the SNA Rule under the example that USAC presented and stated its conclusion that "unless the Commission changes section 36.605 of its rules, SNA support shall be based on the amount the carrier receives its first qualifying year."¹⁵ The Bureau Letter made no reference to USAC's recalculating SNA support received by carriers that met the 14 percent trigger in two subsequent years nor did it give any directive that its "clarification" was to be applied retroactively. In the USAC Letter dated March 2, 2005, however, USAC announced that the clarification "required" USAC to recalculate SNA support for companies that filed subsequent SNA qualification letters after their initial qualification letter on both a prospective and retroactive basis.¹⁶ The USAC Letter then provided the revised monthly support and the prior period adjustment amounts explained in Section I above.

3. Question Presented for Review

Was USAC justified in recalculating the Company's SNA support on a prospective and retroactive basis or do concerns for fulfillment of Commission objectives and due process rights direct USAC to do otherwise?

¹¹ See *Id.* at 1 citing the Memorandum at 1. The Company has not seen a copy of the Memorandum nor could it find a copy on the FCC's Electronic Comment Filing System.

¹² Bureau Letter at 1.

¹³ *Id.* citing 47 C.F.R. § 36.605(c)(2).

¹⁴ Bureau Letter at 1.

¹⁵ *Id.*

¹⁶ See USAC Letter at 1.

4. **Statement of Relief sought and relevant statutory or regulatory provision pursuant to which relief is sought**

The Company requests that the Commission determine whether USAC was justified in significantly reducing the Company's SNA support. According to USAC, the Bureau's recent interpretation of the SNA Rule required it to recalculate the Company's SNA support both on a prospective and retroactive basis. The Company, however, is not aware of any such directive and requests the Commission to conduct a thorough review of this matter to ensure that its objectives for SNA support are being met and that due process concerns are not violated.

Given that the Commission established SNA support solely to provide rural carriers with "appropriate incentives" and "predictability" to invest in the network infrastructure serving their communities;¹⁷ it would appear that significantly reducing promised support to rural carriers would be entirely contradictory to the very existence of SNA. USAC distributes all universal service support, including SNA, under the direction of the FCC.¹⁸ According to the Bureau Letter, in November 2003, USAC sought guidance from the Bureau regarding how the SNA Rule should be applied in situations where carriers have met the SNA eligibility criteria in more than one period and believed that there were at least three different ways for SNA support to be calculated in these situations.¹⁹ In response to USAC's request, the Bureau was silent for over a year. During this period, USAC evidently chose a method which the Bureau later deemed not to be correct. Nevertheless, the method USAC chose appears to have been one USAC considered to be consistent with the SNA Rule, and it continued to use this method until the Bureau responded with its interpretation. The Company has then relied on this method of calculation to plan and execute investments into its network infrastructure to better serve the rural communities that it serves.

To allow USAC to suddenly determine that the SNA support that the Company has relied upon for both past and future investments must be totally recalculated without a full review of its actions would destroy the "predictability" that SNA support was designed to achieve. Accordingly, the Company urges the Commission to make a thorough review of USAC's actions, including a finding as to whether USAC's initial method for advancing the SNA support is in violation of the SNA Rule, and if so, whether other alternatives exist that are more in line with the Commission's stated purposes for SNA than recalculating all of the Company's SNA support.

Additionally, the fact that the Company was not provided with any indication that the SNA support may be recalculated or even that there was any question regarding

¹⁷ See MAG Order at paras. 80 & 81.

¹⁸ See *Semiannual Report of FCC Inspector General*, 2002 FCC Lexis 2823, Memorandum (2002) at 2.

¹⁹ See Bureau Letter at 1.

USAC's interpretation of the SNA Rule raises serious questions regarding whether constitutional due process rights have been violated.

The U.S. Court of Appeals for the D.C. Circuit has found that "[due] process requires that parties receive fair notice before being deprived of property" and that where an interpretation of a regulation is not sufficiently clear to warn a party about what is expected of it, due process rights have been violated.²⁰ The court found that in these situations, "[s]uch confusion does not inspire confidence in the clarity of the regulatory scheme."²¹ The Company fully trusted USAC's method of calculating SNA support in making investments in its network infrastructure to better serve the communities in its service area. The only "notice" that the Company received regarding recalculation of its support was the USAC Letter informing the Company that effective immediately all its support on a prospective and retroactive basis would be recalculated according to the Bureau's recent interpretation. The Company had no reason to believe that USAC, which is under FCC oversight, was calculating its SNA support in a manner inconsistent with FCC directives. It was totally unaware of the Memorandum raising issues regarding interpretation of the Rule (and still has been unable to locate a copy of the document). Accordingly, not only did the Company not have adequate notice that its SNA support would be reduced, it had no reason to even expect that the agency would take such action.

Further, USAC failed to make the required showing that it had the requisite justification or "rational purpose" when it applied the Bureau's interpretation retroactively and then required the Company to pay back support that had previously been advanced. The Supreme Court has ruled that "(t)he retroactive aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former."²² Expounding upon this precedent, the Court declared that the due process standard requires a "showing that the retroactive application of the [regulation] is itself justified by a rational . . . purpose."²³ USAC seeks to justify its actions by stating that it was "required" to recalculate the Company's SNA support because of the Bureau's recent interpretation. The Bureau Letter, however, gives no directive as to whether its interpretation should be applied retroactively or prospectively nor does it give any directive regarding recalculation of existing SNA support. USAC provides no evidence that it even sought the advice of the Bureau before applying its interpretation retroactively.

²⁰ *Trinity Broad. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000) (quoting *General Electric Co. v. EPA*, 53 F.3d 1324, 1329 (D.C. Cir. 1995) (*GE*)) and citing other cases with similar precedent). In *GE*, the court held that the EPA could not fine *GE* for its failure to comply with the agency's interpretation because the regulation was "so far from a reasonable person's understanding of the regulations that [the regulations] could not have fairly informed *GE* of the agency's perspective." *GE*, 53 F.3d at 1330.

²¹ *GE*, 53 F.3d at 1332.

²² *Bowen v. Georgetown Hospital*, 488 U.S. 204 (1988) ("*Bowen*") citing *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16-17 (1976).

²³ *Bowen* citing *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984)).

III. Conclusion

SNA support has been designed specifically to provide rural carriers, like the Company, with the predictability they require to make investments in their network infrastructure to better serve their communities. Rural carriers, like the Company, have made use of this FCC-created mechanism and invested in network infrastructure based on USAC's calculations of the amount of SNA support they should receive. Accordingly, any decisions by the FCC or USAC that might affect the predictability of the amount that these carriers are receiving should be made with the utmost care and seriously evaluate whether any alternatives exist before making any reductions in the amount of support.

As demonstrated herein, however, when USAC finally received a response to its inquiry regarding its interpretation of the SNA Rule and discovered that its interpretation was not in line with the Bureau's interpretation, it took the most drastic action possible – reducing the entire amount of the Company's SNA support. This decision apparently was taken by USAC on its own initiative and with little or no consideration to less drastic alternatives that might be more in line with the Commission's stated objectives. Further, USAC totally disregarded constitutional due process rights by immediately reducing the total amount of support on a prospective and retroactive basis, providing the Company with no prior notice of even the possibility that the Company's SNA support might be recalculated. For these reasons, the Company urges the Commission to review and overturn USAC's decision to recalculate the Company's SNA support.

Based on the foregoing, the Company respectfully requests that while this matter is being reviewed by the Commission, the SNA support that was taken from the Company when USAC retroactively applied the Bureau's interpretation be immediately refunded to the Company. The Company believes that at very least, USAC's actions constituted a change in the rules and should not be applied retroactively.

Respectfully Submitted,



Steve Goodman

Director-Regulatory & Business Development, NTELOS
Roanoke & Botetourt Telephone Company

May 2, 2005

ATTACHMENT 1



Universal Service Administrative Company
High Cost & Low Income Division

Karen Majcher
Director, High Cost Support Mechanism

March 2, 2005

Chris Foster
Roanoke & Botetourt Tel. Co.
1000 Roanoke Road
P.O. BOX 174
Daleville, VA 24083

RE: Changes to the Safety Net Additive Support Calculation beginning February 2005

Dear Chris Foster:

This letter is written to help companies understand how Safety Net Additive (SNA) support will be recalculated based on a recent Federal Communications Commission (FCC) clarification of its rules.

In a January 14, 2005 letter to USAC, the FCC clarified that *"SNA support should be based on the amount calculated for the first qualifying year,"* which would then be paid in the qualifying year and in any of the remaining years of the Rural Task Force (RTF) plan in which the High Cost Loop cap is triggered. The FCC said its rules did not contemplate companies qualifying for SNA support in multiple years and determined that *"additional SNA should not be available where an incumbent LEC meets the 14 percent TPIS trigger in subsequent years."* In other words, once a company qualifies for SNA support, it will receive SNA support based on its initial qualification letter in any of the remaining years of the RTF plan in which the High Cost Loop cap is triggered.

The FCC's clarification will require USAC to recalculate SNA support for companies that filed subsequent SNA qualification letters after their initial qualification letter. These companies will see a prior period adjustment and a new monthly payment value for SNA support beginning with the February 2005 support disbursements that will be received at the end of March 2005. The estimated impact to your company is as follows:

On a Monthly Basis:

SAC	January 2005 Monthly Support	Revised Monthly Support
190249	\$12314.00	\$2112.00

SNA Calculation Letter

Page 2

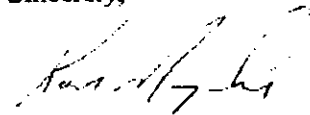
March 2, 2005

On a Summary Basis (Estimated Adjustment from 1st Qualification):

SAC	Total SNA Support Received (A)	Revised Estimate of Total SNA Support to be Received (B)	Estimated SNA Adjustment (B-A)
190249	\$333194.00	\$78144.00	-255050.00

USAC regrets any inconvenience to your company resulting from this modification to the SNA calculation. A copy of the FCC's January 14, 2005 letter can be found on USAC's website at www.universalservice.org/hc. If you have any questions, please do not hesitate to call USAC's Customer Service Center at 877-877-4925.

Sincerely,



Karen Majcher
Director
High Cost Support Mechanism

ATTACHMENT 2

REVISED

Page: 1 of 1

Company Code: 000000249

Statement No.: PS0388429

Date: Mar 30, 2005

Amount of
Payment: _____

Wire or ACH Payment To:

Mellon Bank Pittsburgh

ABA #043000261

NECA Account #199-9830

Roanoke & Botetourt
Attn: Ms. Kim Caldwell
P.O. BOX 174
Daleville, VA 24083-0000

Direct questions to your NECA Regional Industry Relations Office

Total Balance From March 2005 Statement **\$157,561.31 CR**

Adjustments applied to NECA estimates of Universal Service Payments:*

High Cost Loop Fund (USAC)	\$46,288.00	
Interstate Common Line Support (USAC)	\$103,585.00	
Lifeline (USAC)	\$25.00 CR	
Local Switching Support (USAC)	\$57,294.00	
Safety Net Additive (USAC)	\$12,314.00	
Current Net Balance		\$61,894.69
<hr/>		
Total Amount due NECA		\$61,894.69

Payment due upon receipt

* NECA estimates of Universal Service Payments reflected on this statement are derived from prior month payments plus any known changes available to NECA. True-ups to these estimates will be provided in a second statement from NECA

REVISED

Page: 1 of 1

Company Code: 000000249

Statement No.: PS0489692

Date: Apr 28, 2005

Disbursement Notification:

Roanoke & Botetourt
Attn: Ms. Kim Caldwell
P.O. BOX 174
Daleville, VA 24083-0000

THIS IS NOT A NECA BILL
This notification is to advise
you of the current month's
disbursement which is being
made to your company by NECA.

Direct questions to your NECA Regional Industry Relations Office

Total Balance From April 2005 Statement \$70,228.62 CR

Adjustments applied to NECA estimates of Universal Service Payments:*

High Cost Funds Not Received From USAC

\$45,771.00

Lifeline (USAC)

\$30.00 CR

Current Net Balance

\$24,487.62 CR

Total Amount due Exchange Carrier

\$24,487.62 CR

You Will Receive Above Payment By Apr 29, 2005

THIS IS NOT A BILL - DO NOT REMIT PAYMENT

* These adjustments reflect actual payments received from USAC

ATTACHMENT 3

Graphics Off

USAC

Home

Low Income

Rural Health Care

Schools & Libraries

HC Main > What's New Archive - February 2005

Process Overview
 Timetable/Deadlines
 Acronym Glossary
 Quarterly Graphs

[Additional Archives]

What's New Archive - February 2005

High Cost Loop Support
 Local Switching Support
 Long Term Support
 Interstate Access Support
 Forward Looking
 Interstate Common Line Support (ICLS)

- [Introducing: High Cost ILEC and CETC Graphs](#) (2/18/05)
- [Changes to the Safety Net Additive Support Calculation beginning February 2005](#) (2/9/05)

- [The FCC Clarifies the Size of the Interstate Access Support \(IAS\) Mechanism Is Targeted at \\$650 million.](#) (2/7/05)
- [What's New Archives](#)

Certification Requirements
 Line Count Requirements
 Confidentiality Procedures
 Disaggregation

Introducing: High Cost ILEC and CETC Graphs (2/18/05)

[Top of Page](#)

Now available are graphical comparisons of High Cost Support for ILECs and CETCs. These graphs will be updated on a quarterly basis. [Go to Quarterly Graphs.](#)

Disbursement Data
 High Cost Model
 Certification Checklist
 Disaggregation Maps
 IAS Maps

Changes to the Safety Net Additive Support Calculation beginning February 2005 (2/9/05)

[Top of Page](#)

In a January 14, 2005 letter to USAC, the FCC clarified that **"SNA support should be based on the amount calculated for the first qualifying year,"** which would then be paid in the qualifying year and in any of the remaining years of the Rural Task Force (RTF) plan in which the High Cost Loop cap is triggered. The FCC said its rules did not contemplate companies qualifying for SNA support in multiple years and determined that **"additional SNA should not be available where an incumbent LEC meets the 14 percent TPIS trigger in subsequent years."** In other words, once a company qualifies for SNA support, it will receive SNA support based on its initial qualification letter in any of the remaining years of the RTF plan in which the High Cost Loop cap is triggered. **[See letter from FCC to USAC.](#)**

The FCC's clarification will require USAC to recalculate SNA support for companies that filed subsequent SNA qualification letters after their initial qualification letter. The companies affected will receive a letter in February 2005 notifying the companies of the impact to their SNA support.

If you have any questions, please do not hesitate to call USAC's Customer Service Center at 877-877-4925.

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Federal Communications Commission
Washington, D.C. 20554

January 14, 2005

Irene Flannery
Universal Service Administrative Company
High Cost & Low Income Division
2000 L Street, N.W.
Suite 200
Washington, D.C. 20036

Re: Safety Net Additive Support

Dear Ms. Flannery:

This letter is in response to the memorandum submitted by the Universal Service Administrative Company (USAC), dated November 24, 2003 (USAC November 24, 2003 Memorandum), in which USAC requests the Telecommunications Access Policy Division's (TAPD's) guidance in interpreting the safety net additive (SNA) support provisions in section 36.605 of the Commission's rules. Specifically, USAC asks whether carriers who meet the SNA eligibility criteria in more than one period may be eligible to receive additional support, and if so, how much and over what time period. See USAC November 24, 2003 Memorandum at 1.

A rural study area qualifies for SNA support if the incumbent local exchange carrier (LEC) realizes growth in Telecommunications Plant in Service (TPIS) per loop of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.¹ USAC presents an example of a rural incumbent LEC that met the 14 percent TPIS trigger in two subsequent years and proposes three alternative methods for calculating its SNA support. For the reasons set forth below, we find that SNA support should be based on the amount calculated for the first qualifying year, as described in USAC's Scenario #1. See USAC November 24, 2003 Memorandum at 2. This amount would be paid in the qualifying year and in any of the four succeeding years in which the indexed cap on high-cost loop support is triggered.² Additional SNA support should not be available where an incumbent LEC meets the 14 percent TPIS trigger in subsequent years, absent a change in the Commission's rules.

¹ The rules also require that the incumbent LEC notify USAC that it has reached the 14 percent TPIS trigger. See 47 C.F.R. § 36.605(c)(2).

² We note, however, that the period may be less than four years if the Commission does not extend SNA support beyond the duration of the five-year plan adopted in the Rural Task Force Order. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244 (2001) (*Rural Task Order*).

Ms. Irene Flanery

January 14, 2005

Page 2

The Commission's rules do not contemplate qualifying for SNA support in multiple years. In the *Rural Task Force Order*, the Commission noted that its comparison of cost data submitted to the National Exchange Carrier Association (NECA) by rural incumbent LECs showed that approximately five percent of those companies had increases in TPIS of more than 14 percent between 1998 and 1999.³ The Commission stated in the *Rural Task Force Order* that "once a study area qualifies for safety net additive, the study area will receive such support in any of the remaining years of this plan in which the cap is triggered, *whether or not* the study area meets the 14 percent TPIS trigger in those years."⁴ In addition, because the Commission anticipated that meeting the 14 percent TPIS trigger would be a relatively uncommon occurrence, the Commission's rules do not provide for additional SNA if a carrier qualified again in subsequent years. Thus, when looking at the rule in combination with the stated intent and the text of the *Rural Task Force Order* that led to the adoption of Rule 36.605, we believe that the approach set forth in Scenario #1 represents the proper application of Rule 36.605.

Accordingly, unless the Commission changes section 36.605 of its rules, SNA support shall be based on the amount the carrier receives in its first qualifying year.

Very truly yours,



Jeffrey J. Castale
Chief
Wireline Competition Bureau

³ See *Rural Task Order*, 16 FCC Rcd at 11278, para. 82.

⁴ *Id.* at 11279, para. 88.